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13 July 1955

MEMORANDUM FOR: Director of Personnel

SUBJECT: Proposed Dispatch Regarding the Applicability of the 1955 Legislative Pay Increase to Contract Personnel

1. A draft of a dispatch to be sent to these stations utilizing contract personnel has been forwarded to this office for coordination. This dispatch is intended to provide information regarding the application of the recent legislative pay increase to contract personnel.

2. The proposed dispatch does not, in the opinion of this office, offer clear guidance as to the applicability of the legislative pay increase to contract agents (independent contractors). Paragraph 3 appears to invite consideration by Headquarters of requests for salary increases "substantially equal in amount to the legislative pay increase" to any or all contract personnel, whether such personnel are employees or independent contractors. However, the paragraph then states that approval or disapproval of the request will take cognizance of, among other factors, "... the legal relationship of the individual to ~~CIAHQ~~ . . ." It appears to us that if the legal relationship is to be taken into consideration in granting a commensurate increase, the dispatch should define what difference the relationship will make in processing the requests. This was accomplished in a compensation information notice following the legislative pay increase of 1951 by CIA Notice 31-52, dated 8 March 1952.

3. CIA Notice 31-52, entitled "Application of the Agency Pay Increase of 24 October 1951 to Contract Personnel" first stated that the Director had approved salary increases for CIA employees. Paragraphs 2 and 3 of the Notice then read:

"2. This is not necessarily true of persons engaged under contract by CIA. Many, if not most, of such persons are not employees but are independent contractors. Further, the services being rendered have not been classified in accordance with the Classification Act of 1949 as to appropriate grade level. The salaries being paid are negotiated salaries and, in many instances, would be at variance with those prescribed for the positions had they been classified on a strict functional basis. Further, the qualifications of the incumbents are frequently not appraisable in terms of the purely functional requirements of the positions.

"3. It is recognised, however, that certain persons engaged under contract may in fact be employees of CIA, may have been engaged at salary levels comparable to those at which the positions would have been classified, and, lastly, that the incumbents may be qualified to hold the positions. If such conditions prevail, it has been determined that these persons should receive the benefits of the pay increase.

authorized for appointed employees."

The Notice continued on to establish the basis and criteria for making the determination that certain contract personnel, called "contract agents", would receive the increase if they were, in fact, employees by common law standards of use. This appeared to be a second manner of handling the then existing problem of proper categorization with a desirable degree of uniformity.

4. The language of the proposed dispatch establishes no guides as to which contract personnel may receive the increase and will result in varied interpretations of its meaning. Consequently, some stations may consider the pay increase to be inapplicable to contract agents and submit no requests, others may raise false hopes by submitting all names. The only real promise held out is that by some arbitrary means, without announced standards, "headquarters" will decide.

5. Beyond a vagueness of direction, in the proposed dispatch, this office raises these points for your consideration:

- (a) The intent of Congress in passing the recent pay increase was clearly to make it applicable to Federal employees for reasons of increased cost of living in the last four years. It is our understanding that there are very few, if any, extant contracts with contract agents which have not been either negotiated or renewed within that period. Considerations of merit and performance are irrelevant in determining whether an amount equivalent to the legislative pay increase should be given to independent contractors . . . they may be rewarded at any time by adjusting the contract compensation;
- (b) The contractual relationship established between this Agency and those individuals engaged as independent contractors is based on negotiated terms - which are or may be, completely unrelated to those emoluments received by employees of the Agency. One of the major considerations prompting the Agency to use the independent contractor category of personnel stems from the nature of the covert objectives to be accomplished. These objectives require the utilization of some personnel over whom immediate supervision of their activities is infeasible and the administrative complications attendant to employee status are to be avoided. With these individuals the Agency deliberately does not concern itself with considerations of overtime, nor does it require a 40-hour week. These individuals are not granted Federal Employees Life Insurance coverage, retirement benefits, in-grade promotions, tenure, and other fringe benefits.

Instead, their compensation is fixed by negotiation reflecting the open market rate without necessary consideration of those factors ~~present~~ in establishing the compensation which may be paid an employee. The Agency could not, during the term of their contracts, lower the stipulated contract compensation if staff personnel were subjected to a legislative pay decrease. In the reverse, any gratuitous increase of contract compensation, unrelated to personnel, distorts the basic concept of the contractual relationship. If the categories of personnel are presently relatively pure, as we understand you consider them to be, granting an amount equivalent to the legislative pay increase to contract agents only serves to further confuse the distinction between the categories. To clarify this distinction, we believe, has been the major effort in the administration of contract personnel in the last few years.

6. In considering the views of this office set forth above, we should like to point out that our only concern in the matter is to maintain the legal integrity of the Agency's personnel categories. This office has no responsibility for determining "how much" any type of contract personnel is to be paid.

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Acting General Counsel

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